IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 400 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI ALIAS BATUKBHAI L SHAH

Versus

BHANUSHALI HIRALAL MOHANLAL NANDA

Appearance:

MS BR THAKKER for Appellant

MR SURESH M SHAH for Respondent

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 30/01/2002

ORAL JUDGEMENT

1. Heard Ms.B.R.Thakkar, learned advocate for the appellant and Mr.S.M.Shah, learned advocate for the respondent.

2. The appellant, who is plaintiff in Special Civil Suit No.80 of 2000 has by filing this appeal under Section 104 of the Civil Procedure Code read with Order 43, Rule 1(r) of the Civil Procedure Code challenged the

order dated 30th September, 2000 passed below application Exh.5 by the learned 2nd Joint Civil Judge (S.D.), Jamnagar.

3. This appeal is filed by the plaintiff, who filed an application Exh.5 for interim injunction, pending the suit, bearing Special Civil Suit No.80 of 2000. The learned advocate for the appellant has furnished a copy of the plaint. On going through the plaint, it appears that the plaintiff has prayed for a decree for specific performance of agreement to sell dated 14/1/2000 executed by the defendant and another relief available under the law on the basis of equity. The plaintiff has not prayed for any relief of decree of perpetual injunction restraining defendant from transferring the suit land by way of sale or by any other mode till the final disposal of the suit. Without making a prayer for decree of perpetual injunction, the plaintiff has prayed for interim injunction in para-9 of application Exh.5.

4. In the case of Gujarat Electricity Board v/s. M/s.Maheshkumar & Company, reported in 1982 (2) GLR 479. This Court has observed as follows :

> "It is also a settled principle of law that in a suit where there is no permanent injunction sought for, in the final analysis, ordinarily a temporary injunction cannot be granted. The principles that govern the grant of perpetual injunction, therefore, would govern the grant of a temporary injunction also."

5. In view of the above legal position, when the plaintiff has not prayed for a decree for perpetual injunction in terms of para-9(a) of the application Exh.5 an interim injunction cannot be granted to the plaintiff. The learned Judge of the trial Court has assigned reasons for arriving at a decision for refusing the interim injunction.

6. For the scope and ambit of powers of this Court for dealing such type of Appeal from Orders, the Hon'ble Supreme Court has laid down the following preposition of law, in the case of Laxmikant V. Patel v/s. Chetanbhat Shah, reported in 2001 AIR SCW 4989.

> "17. We are conscious of the law that this Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the trial Court and substitute its own discretion therefor except

> where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the Court under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. Allellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretioin has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion [(See Wander Ltd. v. Antox India P. Ltd., 1990 (Supp) SCC 727 and N.R. Dongre v. Whirpool Corporatioin, (1996) 5 SCC 714)]."

7. This Court is satisfied that there is nothing otherwise to disturb the impugned order. In view of this, this appeal deserves to be dismissed. Accordingly, this appeal is dismissed. The appellant shall bear the costs of the respondent for this appeal and shall bear his own. Memo of costs be drawn accordingly.

(H.H.Mehta,J.)

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